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PROVIDING FOR A GAO STUDY ON CONDITIONS OF DIS-
PLACED SALVADORANS AND NICARAGUANS, AND FOR
OTHER PURPOSES

NOVEMBER 4 (legislative day, OCTOBER 16), 1987.—Ordered to be printed

Mr. BIDEN, from the Committee on the Judiciary,
submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 332, as amended]

The Committee on the Judiciary, to which was referred the bill (S. 332) to provide for a General Accounting Office investigation and report on conditions of displaced Salvadorans and Nicaraguans, to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, and to provide for the temporary stay of detention and deportation of certain Salvadorans and Nicaraguans, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill as amended do pass.

CONTENTS

	Page
I. Purpose.....	2
II. Legislative History.....	2
III. Discussion.....	3
IV. Text of S. 332.....	7
V. Cost Estimate.....	10
VI. Regulatory Impact Statement.....	12
VII. Vote of the Committee.....	12
VIII. Minority Views.....	13

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I. PURPOSE

The purpose of S. 332 is to temporarily suspend the deportation of nationals of El Salvador and Nicaragua in the United States pending a General Accounting Office study of conditions in those countries and of displaced nationals of those countries.

The GAO is directed to investigate and report to the Congress the living conditions, security, health and nutrition conditions, and availability of assistance for Salvadorans and Nicaraguans displaced inside and outside their countries. The GAO is further directed to study the general conditions and circumstances in El Salvador and Nicaragua faced by those nationals required to depart the United States with particular attention to determining the reliability of human rights reports and individual status reports and how the information contained in them might be improved.

The bill provides for the appropriate committees of each House to hold hearings to consider appropriate U.S. steps to assure the personal safety and equitable distribution of assistance to displaced Salvadorans and Nicaraguans. In addition, the committee shall consider whether to continue the suspension of deportations of those nationals contained in Title III.

II. LEGISLATIVE HISTORY

97TH CONGRESS

Beginning in early 1981, as violence in El Salvador significantly escalated, numerous Members of Congress from both Houses petitioned the Administration to stay temporarily the deportation of Salvadoran nationals through an administrative procedure historically used for such purposes: "extended voluntary departure." (EVD) On April 6, 1981, Senator Kennedy presented the case in letters to then-Secretary of State Alexander M. Haig, Jr., and to the Immigration and Naturalization Service, stating to Secretary Haig that "I believe we must be vigilant that we are not unnecessarily endangering the lives of Salvadorans who understandably do not want to return to their country at this time."

However, this request, as well as all subsequent requests from the Congress, were either ignored or denied.

98TH CONGRESS

On May 26, 1983, Senator DeConcini introduced S. Res. 156, expressing the sense of the Senate that extended voluntary departure status should be granted to Salvadorans in the United States whose safety would be endangered if they were required to return to El Salvador. The bill was referred to the Subcommittee on Immigration and Refugee Policy of the Senate Judiciary Committee where no action was taken.

A similar sense of the Senate resolution was included in the FY 1984 Department of State Authorization, which was passed by the Congress in 1983 and enacted into law (Public Law 98-164). Although the President signed the bill containing the resolution, the Administration still failed to grant EVD to Salvadorans.

Finally, on November 17, 1983, at the end of the 98th Congress, Senator DeConcini introduced S. 2131 to stay the deportation of

Salvadorans from the United States. Although that bill garnered the support of 21 cosponsors in the Senate, the Subcommittee on Immigration and Refugee Policy was unable to act on it prior to adjournment of the 98th Congress.

99TH CONGRESS

On February 5, 1985, Senators DeConcini, Kennedy, Pell, Durenberger, Specter, Boschwitz, and Leahy introduced S. 377. S. 377, similar to S. 2131 as introduced in the 98th Congress, was reported by the Immigration Subcommittee to the full Judiciary Committee on September 30, 1985, after a hearing on April 22 of that year. S. 377 was cosponsored by 27 members of the Senate, but despite reaching the top of the Judiciary Committee's agenda, was not considered by the committee.

100TH CONGRESS

On January 20, 1987, Senator DeConcini, with bipartisan cosponsorship, reintroduced the subject legislation, now numbered S. 332. The bill was referred to the Subcommittee on Immigration and Refugee Affairs, chaired by Senator Kennedy, and was favorably reported out of the subcommittee on April 10, 1987. At the request of Senator Simpson, the Immigration Subcommittee held a hearing during full committee consideration of the measure. The subcommittee hearing was held on June 18, 1987. In the course of committee consideration, in addition to other changes, the bill was amended by Senator Kennedy to include Nicaraguan nationals.

S. 332 currently has the bipartisan cosponsorship of 29 Members of the Senate.

III. DISCUSSION

BACKGROUND

An estimated 62,000 innocent civilians have been killed since the start of the current civil war in El Salvador in 1979. Similarly, reportedly thousands of civilians have fallen victim to indiscriminate violence associated with the civil war in Nicaragua.

The United States has historically provided temporary relief from deportation, known as "extended voluntary departure," for nationals of countries experiencing acute unrest, such as is known to exist in El Salvador and Nicaragua. However, the administration has rejected congressional and other pleas that this tradition be applied also to nationals of El Salvador and Nicaragua. The lack of responsiveness by the administration compels the committee to favorably report S. 332, which proposes a stay of deportation patterned after the historical use of extended voluntary departure.

EXTENDED VOLUNTARY DEPARTURE

Over the past quarter century, the U.S. Attorney General, upon the advice of the Secretary of State, has utilized the device of "extended voluntary departure" to suspend temporarily the deportation of nationals of countries experiencing significant civil unrest or a general breakdown of order. EVD has been so applied to some 16 groups over that period, including nationals of Cuba, Czechoslo-

vakia, Chile, Cambodia, Vietnam, Laos, Lebanon, Hungary, Rumania, and Uganda, and, currently, nationals of Poland, Afghanistan, and Ethiopia.

EXTENDED VOLUNTARY DEPARTURE VS. ASYLUM

The authority available to the Attorney General to confer EVD is found in the Immigration and Nationality Act (Secs. 242 and 244). It, like the stay of deportation proposed in S. 332, is distinct from, and complementary to, the Attorney General's obligations under the Refugee Act of 1980 to grant asylum to individuals with a "well-founded fear of persecution" should they be required to depart.

EVD has been granted to groups based upon general conditions in the homeland—not because each individual within the group would be a victim of persecution. Asylum under the Refugee Act, on the other hand, is for individuals—not groups—who are likely targets of persecution. For example, since 1980, when the Refugee Act was enacted, the Attorney General, upon the recommendation of the Secretary of State, has granted EVD to nationals of Poland, Uganda, Afghanistan, and Ethiopia because of the general civil unrest in those countries. Simultaneously, the Attorney General granted asylum to individuals within those groups who might be specifically singled out for persecution if returned.

In the first half of FY 1987, the Immigration and Naturalization Service granted asylum to 3 percent of those Salvadoran asylum applications adjudicated and 88 percent of those by Nicaraguans. At the same time, deportations or required departures to those countries continued.¹

GENERAL CONDITIONS IN EL SALVADOR

Since 1979, continuous violence and civil war has plagued tiny El Salvador, a country about the size of Massachusetts. Over that time, over 1 million, or at least 20 percent, of the country's 5 million inhabitants have been uprooted by conflict as government forces and those of the opposition Farabundo Marti Front for National Liberation (FMLN) contend. In contrast, even at the height of the Vietnam war the number of inhabitants displaced never exceeded 8 percent of the population.²

Estimates of the number of Salvadorans illegally in the United States are in the 500,000 range, though may run as high as 750,000. The U.S. Bureau of the Census notes that most of this migration occurred since the start of the civil war in El Salvador. As the Bureau states, "Salvadorans began fleeing their country en masse in April 1980, as the conflict between government troops and opposition forces escalated after the assassination of Catholic Archbishop Oscar Romero."³

¹ INS defines "required departure" as "the directed departure of an alien from the United States without an order of deportation. The departure may be voluntary or involuntary . . . and may or may not have been preceded by a hearing before an Immigration Judge."

² See *Refugee Problems in Central America*, Staff Report prepared for the use of the Subcommittee on Immigration and Refugee Policy, Committee on the Judiciary, U.S. Senate, September 1983, S. Rpt. 98-139.

³ Statement by Linda Peterson, Bureau of the Census, before the House Subcommittee on Census and Population, June 27, 1985.

The violence over that time has been both randomly and specifically directed. The terror against specific individuals by so-called rightwing "death squads" is well known. While the activities of death squads have declined significantly since the early 1980's, they remain unacceptably high. But even more significant to the need for a temporary stay of deportation is that over 62,000 innocent civilians have been killed by random violence associated with the ongoing civil war. While such violence has abated since the early stages of the civil war, in 1986 alone, according to Tutela Legal (the Salvadoran Catholic Church's human rights monitoring office), there were 45 death squad killings, 52 indiscriminate killings by the army, 54 civilian victims of mines (46 of which were believed the victims of FMLN mines), 47 targeted assassinations by the army and 42 by the FMLN, and 81 disappearances. In addition, Tutela Legal estimated that an additional 778 individuals were killed in military operations, where the majority were presumed to be civilians, with some Catholic Church sources reporting that the figure could be as high as 1,000 civilian deaths. This would be the equivalent, proportionally, to 50,000 civilian deaths in the United States.

This violence led Catholic Archbishop Arturo Rivera y Damas, who has played a major role in El Salvador in mediating negotiations between rebel factions and the central government, to issue an extraordinary letter to Members of Congress earlier this year. The letter pleaded for passage of the legislation "because of the prolongation of the conflict that continues" in El Salvador.⁴

The committee received testimony on June 18, 1987, from Americas Watch, which monitors human rights conditions in the Western Hemisphere. Mr. Aryeh Neier, Americas Watch vice-chairman summarized:

The most important features of the human rights situation in El Salvador are: (1) the country is at war and non-combatants are victimized by both the armed forces and the guerrillas; (2) the object of both sides in the war is to control the civilian population. Many of those they cannot control are deliberately driven from their homes to create free fire zones or to deny their opponents a civilian base of support. This has created a vast population of internally displaced persons and external refugees who cannot safely return to their homes and livelihoods; and (3) the Salvadoran judicial system is subservient to the armed forces and is demonstrably incapable of offering Salvadoran citizens legal recourse or protection for abuses of human rights.

There has been some effort by the Department of State to track the fate of Salvadorans who have been returned to El Salvador over the past few years. This responsibility has been given by contract to the Intergovernmental Committee for Migration (ICM), which conducts a valuable reception and counseling service for returnees.

⁴ April 19, 1987 letter to U.S. Congressman Joe Moakley (primary House sponsor of legislation similar to S. 332).

The General Accounting Office has examined the methodology and data of the ICM program and concluded that the extent of problems experienced by returned Salvadorans is "not determinable." GAO noted that ICM (1) uses data collection methods that do not clearly request information about personal security, (2) collects information about returnees from family, friends, neighbors, and officials who may not have accurate information about the returnees' experiences, (3) lacks information about the condition of some of the returnees, and (4) maintains relatively short-term contact with returnees.⁵

CONDITIONS IN NICARAGUA

As with El Salvador, the general security of the civilian population in Nicaragua is placed at risk by ongoing civil war. Estimates are now that as many as 100,000 Nicaraguans are in the United States illegally, having left Nicaragua over the course of the conflict in that country.

The State Department's 1986 country reports on human rights conditions noted that an estimated 500 innocent civilians were killed by Sandinista forces. It is not known how many civilians were killed as a result of contra violence. While all parties to the conflicts in both El Salvador and Nicaragua frequently use land mines, with innocent civilians the common casualties, it is the rebel forces in both countries—in the Nicaraguan case the contras—which utilize mines most often.

Despite the many similarities in the form and intensity of the violence in El Salvador and Nicaragua, the administration has tended to be more sympathetic toward the victims from Nicaragua. As Assistant Secretary of State Elliot Abrams has stated to the Congress,

Given our policy toward Nicaragua, it would be unconscionable to force the return of these people to the control of a regime which deprives them of basic liberties and which might treat them as traitors.⁶

Further, Deputy Assistant Secretary of State William Walker testified on June 18 before the Subcommittee on Immigration and Refugee Affairs that

While the emphasis (in S. 332) is on El Salvador, the situation in Nicaragua is far and away the most worrisome.

While this statement was made before the committee accepted Senator Kennedy's amendment to include Nicaraguan nationals within the scope of the legislation, it nonetheless demonstrates a continuing bias in favor of those fleeing Nicaragua as against those from El Salvador.

Despite this bias, the administration still has not seen fit to provide extended voluntary departure to Nicaraguans, thus necessitating their inclusion within S. 332. The Attorney General attempted

⁵ U.S. General Accounting Office, "Extent of Problems Experienced by Returned Salvadorans Not Determinable," GAO/NSIAD-87-158BR, May 1987.

⁶ Letter from Assistant Secretary of State for Inter-American Affairs Elliot Abrams to Rep. Joe Moakley, March 2, 1987.

to allay the fears of many within the Nicaraguan community in the United States by announcing, on July 8, measures to view sympathetically their requests for asylum and work permission. Yet the announcement was little more than a restatement of benefits which should be available to a national of any country who might have a nonfrivolous claim to asylum.

Furthermore, we do not currently have a consistent national immigration policy toward Nicaraguans. The Immigration and Naturalization Service District Director in Miami—where the majority of the Nicaraguans in the United States are located—unilaterally declared that he would not deport Nicaraguans from his district. However, other district directors are continuing to require Nicaraguans to depart the United States. Thus, S. 332, as amended, would rationalize this process.

IV. TEXT OF S. 332, AS AMENDED

[S. 332, 100th Cong., 1st Sess.]

A BILL To provide for a General Accounting Office investigation and report on conditions of displaced Salvadorans and Nicaraguans, to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, to provide for the temporary stay of detention and deportation of certain Salvadorans and Nicaraguans, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GENERAL ACCOUNTING OFFICE INVESTIGATION AND REPORT

INVESTIGATION

SEC. 101. (a) **REQUIRING GAO INVESTIGATION OF DISPLACED SALVADORANS AND NICARAGUANS.**—Within sixty days after the date of the enactment of this Act, the Comptroller General shall begin an investigation concerning displaced nationals of El Salvador and Nicaragua.

(b) **DETERMINATIONS ON DISPLACED SALVADORANS AND NICARAGUANS IN CENTRAL AMERICA.**—The investigation shall determine the following with respect to displaced Salvadorans and displaced Nicaraguans who are present in either El Salvador, Honduras, Guatemala, Mexico, or Nicaragua, regardless of whether or not they are registered:

(1) The number of these displaced persons and their current locations.

(2) Their place of origin in El Salvador or Nicaragua (as the case may be) and the period of, and reason for, their displacement.

(3) Their current living conditions, with particular attention to (A) their personal safety and the personal safety of those providing assistance to them, and (B) the availability of food and medical assistance.

(c) **DETERMINATIONS ON CONDITIONS IN EL SALVADOR THAT COULD AFFECT SALVADORANS WHO HAVE RETURNED FROM THE UNITED STATES.**—The investigation shall—

(1) assess the general conditions and circumstances in El Salvador that may affect returned nationals with particular attention to determining the reliability and use of (A) reports of any violence of fundamental human rights, and (B) reports concerning the status of Salvadorans who have returned from the United States; and

(2) make recommendations for improvements in the type of information provided by such reports.

(d) DETERMINATIONS ON SALVADORANS SEEKING REFUGE IN OTHER COUNTRIES.—The investigation shall describe the policies of all other countries in which Salvadorans have sought refuge as these policies concern the return of the Salvadorans to El Salvador.

REPORT

SEC. 102. The Comptroller General shall submit to the Speaker of the House of Representatives and the President of the Senate, not later than one year after the date of the initiation of the study under section 101, a report on that study including detailed findings on the items described in subsections (b), (c), and (d) of that section.

TITLE II—CONGRESSIONAL REVIEW

REFERRAL OF REPORT, COMMITTEE HEARINGS, AND COMMITTEE REPORT

SEC. 201. (a) REFERRAL.—The report, when submitted under section 102, shall be referred, in accordance with the rules of each House, to the standing committee or committees of each House of Congress having jurisdiction over the subjects of the report, and the report shall be printed as a document of the House of Representatives.

(b) COMMITTEE HEARINGS.—No later than ninety days of continuous session of Congress after the date of the referral of the report to a committee, the committee shall initiate hearings, insofar as such committee has legislative or oversight jurisdiction, to consider—

(1) the findings of the report,

(2) the appropriate steps that should be taken to provide assurances of personal safety and adequate, efficient, and equitable distribution of assistance with respect to Salvadorans or Nicaraguans who are displaced within El Salvador or Nicaragua (as the case may be) or who have fled to other countries in Central America,

(3) treaty obligations of the United States, humanitarian considerations, and previous practice of the United States respecting the treatment of aliens in similar circumstances, and

(4) whether it is appropriate to extend, remove, or alter the restrictions contained in title III.

(c) COMMITTEE REPORT.—Not later than 270 days of continuous session of the Congress after the date of the referral of the report to a committee, the committee shall report to its respective House its oversight findings and any legislation it deems appropriate.

(d) TREATMENT OF CONTINUITY OF SESSION.—For purposes of this Act, continuity of session of Congress is broken only by an adjourn-

ment sine die at the end of the second regular session of a Congress, and days on which either House of Congress is not in session because of an adjournment of more than ten days to a date certain are excluded from the computation of the periods of continuous session of Congress.

TITLE III—TEMPORARY STAY OF DEPORTATION

LIMITATION ON DETENTION AND DEPORTATION

SEC. 301. (a) LIMITATION.—(1) Except as provided in paragraph (2), the Attorney General shall not detain or deport (to El Salvador or Nicaragua, as the case may be) aliens described in subsection (b) during the period beginning on the date of enactment of this Act and ending 270 days of continuous session of Congress after the date of transmittal of the report of the Comptroller General to the Speaker of the House of Representatives under section 102.

(2) Paragraph (1) shall not be construed to prohibit the brief interrogation of an alien under section 287(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1357(a)(1)) for the purpose of determining whether this section applies to particular aliens.

(b) SALVADORANS AND NICARAGUANS COVERED BY THE LIMITATION.—The nationals referred to in subsection (a)(1) are aliens who—

- (1) are nationals of El Salvador or Nicaragua,
- (2) are continuously present in the United States since the date of the enactment of this Act, and
- (3) are determined to be deportable only under—
 - (A) paragraph (1) of section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1251(a)), but only as such paragraph relates to a ground for exclusion described in paragraph (14), (15), (20), (21), (25), or (32) of section 212(a) of such Act (8 U.S.C. 1182(a)), or
 - (B) under paragraph (2), (9), or (10) of section 241(a) of such Act (8 U.S.C. 1254(a)).

PERIOD OF STAY OF DEPORTATION NOT COUNTED TOWARDS OBTAINING SUSPENSION OF DEPORTATION BENEFIT

SEC. 302. With respect to an alien whose deportation is temporarily stayed under section 301 during a period, the period of the stay shall not be counted as a period of physical presence in the United States for purposes of section 244(a) of the Immigration and Nationality Act (8 U.S.C. 1254(a)).

ADDITIONAL REQUIREMENTS

SEC. 303. (a) Each alien receiving a stay of deportation under section 301 shall register with the Immigration and Naturalization Service anytime beginning 30 days after the date of enactment of this Act and ending 90 days thereafter.

(b) The Attorney General shall require that each alien receiving a stay of deportation under section 301 may work in the United States only if such alien obtains a special work authorization document with a specific expiration date from the Immigration and Naturalization Service.

(c) No person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or public opinion may obtain the benefit described in section 301(a).

(d) No person may receive a benefit described in section 301(a) if such person does not apply for such benefit during the period which begins 30 days after the date of enactment of this Act and ends 90 days thereafter.

TITLE IV—MISCELLANEOUS PROVISIONS

REIMBURSEMENT OF CERTAIN STATE AND LOCAL COSTS

SEC. 401. The Secretary of Health and Human Services shall reimburse each State and local government for 100 percent of the costs incurred by such government as a result of its participation in programs of public assistance to those aliens receiving a temporary stay of deportation under section 301.

STATUS OF ALIENS FOR PURPOSES OF STATE OR LOCAL FINANCIAL ASSISTANCE

SEC. 402. Notwithstanding any other provision of law, aliens receiving a temporary stay of deportation under section 301(a) shall not be considered, for purposes of any State or local law providing for a program of financial assistance, to be permanently residing in the United States under color of law.

ALLOCATION FOR SALVADORAN RECEPTION AND COUNSELING PROGRAM

SEC. 403. Of the amount authorized to be appropriated for fiscal year 1988 for the "Migration and Refugee Assistance" account of the Department of State, \$400,000 shall be available only for the Intergovernmental Committee on Migration for the Salvadoran Reception and Counseling Program.

V. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 15, 1987.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 332, a bill to provide for a General Accounting Office (GAO) investigation and report on conditions of displaced Salvadorans and Nicaraguans, to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, to provide for the temporary stay of detention and deportation of certain Salvadorans and Nicaraguans, and other purposes, as ordered reported by the Senate Committee on the Judiciary, July 15, 1987.

The GAO investigation is to begin within 60 days of enactment, and the report would be due no later than one year after the study begins. S. 332 would prohibit the detention and deportation of cer-

tain Salvadoran and Nicaraguan nationals continuously present in the United States since the date of enactment of the bill for a period beginning on the date of enactment and ending 270 days of continuous session of the Congress after the GAO transmits its report. This would require all Salvadorans and Nicaraguans to whom this bill would apply to register with the Immigration and Naturalization Service (INS) during the period beginning 30 days after the date of enactment and ending 90 days thereafter. These nationals would become eligible under current law for federal public assistance and would generally become eligible for state and local public assistance. The bill would require the federal government to reimburse state and local governments for their costs of providing public assistance.

Based on information provided by the GAO, CBO estimates that its investigation and report will cost between \$500,000 and \$750,000, largely in 1988, but it is not likely to affect total agency spending. Even though most Salvadoran and Nicaraguan nationals could not be detained or deported during the specified period, should this legislation be enacted there would be little or no cost savings because there is a backlog of other categories of aliens to be detained or deported.

By prohibiting the detention and deportation of certain unauthorized aliens currently living in the United States, this bill would result in additional costs to the federal government for federal public assistance programs and for public assistance programs provided by state and local governments. CBO estimates that increased costs to the federal government for this public assistance would be between \$40 million and \$65 million for fiscal year 1988, between \$160 million and \$260 million for fiscal year 1989, and between \$35 million and \$55 million for fiscal year 1990. These costs would be for both federal assistance programs and state and local general assistance programs that provide cash payments and medical coverage to low income families and individuals. Some of these costs—for Aid to Families With Dependent Children (AFDC), Supplemental Security Income (SSI), Unemployment Compensation, Medicaid and federal reimbursement of state costs for AFDC and Medicaid—could result from direct spending authority and would not require appropriation action. Of the above costs, we estimate that direct spending would account for about \$35 million in 1988, \$150 million in 1989, and \$30 million in 1990.

CBO's estimate assumes that there are currently between 300,000 and 500,000 Salvadoran and Nicaraguan nationals to whom this bill would apply. We estimate that 60 percent would register with the INS and would therefore be granted a stay of detention and deportation for a period of approximately two years, as specified in the bill. A recent order by the Attorney General could reduce the costs of this bill by increasing the number of Nicaraguans allowed to remain in the United States under current law; however, it appears unlikely that the new order will significantly affect the number of individuals affected by this bill.

Costs to state and local governments would be \$15 million to \$25 million in fiscal year 1988, \$70 million to \$115 million in fiscal year 1989 and \$15 million to \$25 million in fiscal year 1990. However, assuming full appropriation of the necessary amounts requiring ap-

propriation, the federal government would reimburse state and local governments for 100 percent of these costs. Of the projected federal reimbursement, appropriations would be needed for \$5 million to \$10 million in 1988 and 1990, and for \$25 million to \$40 million in 1989. State and local governments could even experience a budgetary savings under this bill. Certain current expenditures by states and localities would be reimbursed by the federal government: free health care provided to unauthorized aliens in public hospitals and any public assistance being received illegally by unauthorized aliens. However, CBO does not have sufficient information to estimate these potential savings.

On July 10, 1987, CBO transmitted an estimate for H.R. 618 (as ordered reported by the House Committee on the Judiciary), and on July 22, 1987, CBO transmitted estimates for H.R. 618 and H.R. 1409 (as ordered reported by the House Committee on Rules). These bills also provided for a two-year stay of deportation for Salvadoran and Nicaraguan nationals. Under these bills, Salvadoran and Nicaraguan nationals would be ineligible for federal public assistance but would generally be eligible for state and local assistance. CBO estimates that increased costs to states and localities for this public assistance would be between \$20 million and \$30 million for fiscal year 1988 and between \$60 million and \$100 million for fiscal year 1989.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

VI. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b), Rule XXVI of the Standing Rules of the Senate, the committee has concluded that the bill will have no regulatory impact.

VII. VOTE OF THE COMMITTEE

The Committee on the Judiciary, on July 15, 1987, in open session and with a quorum present, favorably reported bill S. 332, as amended, to the full Senate by a recorded vote of 9 to 3.

VIII. MINORITY VIEWS OF MR. SIMPSON ON S. 332

There are three primary reasons for my opposition to this bill to suspend the deportation of all Salvadorans and Nicaraguans present in the United States in an illegal immigration status: (1) It undercuts the Refugee Act of 1980, (2) it is harmful to U.S. immigration policy and would promote illegal immigration, and (3) conditions in El Salvador and Nicaragua do not warrant the extremely broad relief that it grants.

My opposition to this legislation should not be misinterpreted as any lack of compassion toward El Salvador: I strongly support all efforts to make that country more safe and democratic. I have consistently supported economic and military aid to that country. I believe such aid is necessary to foil the guerrilla insurgency in that country, to encourage the proper and professional conduct of the Salvadoran military, and to promote other democratic reforms. We have seen much progress in El Salvador in recent years, but legislation like this does not add to this progress, and I feel it would also have many adverse immigration consequences in the United States.

I. UNDERCUTTING REFUGEE ACT OF 1980

The Attorney General may presently grant political asylum to anyone in this country who establishes a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion. (§ 208 of the Immigration and Nationality Act (INA)). The United States is also bound by law and international treaty to withhold the deportation of any person whose "life or freedom" would be jeopardized, on those same grounds, if that person were returned to his homeland. (INA § 243(h)). This standard is adopted from the United Nations Convention and Protocol relating to the status of refugees, and many members of this committee—Democrat and Republican alike—played a key role in ensuring that this standard became U.S. Law through passage of the Refugee Act of 1980.

The Refugee Act specifically provided for a "case-by-case" review of every claim for refugee status, and it sought to end the "country-specific" standards we had employed in the past. Before 1980, only those applicants for asylum from Communist countries or the Middle East would qualify. I supported this rational and equitable change in our refugee laws, and so did all others who were present at the time: The Refugee Act originally passed the Senate by a vote of 85 to 0.

Unfortunately, S. 332 specifically and disturbingly employs two of the main approaches that the Refugee Act sought to end: (1) a blanket approach instead of a "case-by-case approach" (everyone from a particular country qualifies), and (2) country specificity (El

Salvador and Nicaragua are specifically named). The blanket approach is inadvisable because it grants refugee status to anyone from a particular country—regardless of the merits of the claim to persecution. Given the American public's stated concerns with overly high levels of immigration, we should select carefully those to whom we give immigration benefits. The blanket approach is the least selective process possible.

The country-specific approach is improper because it injects foreign policy considerations and domestic interest-group pressures into a process that should be almost pristine in its neutrality: The determination of who qualifies as an immigrant or refugee under our laws. It is much wiser to have a fair standard that applies to all countries than to have an overly generous standard that applies to just a few countries.

The supporters of this legislation argue that it will not grant a true "refugee status," and thus the Refugee Act is not a proper analogy. I disagree, because the American public does not distinguish between "refugee" or "suspended deportee," it only knows that "too many aliens are here"—according to what the latest public opinion polls tell us. Thus, the perception that we have accepted hundreds of thousands of people from El Salvador who are fleeing "turmoil and insecurity" will undercut public support when we next use the refugee act to respond to a *real* refugee emergency. This point should not be taken lightly. We have twice seen refugee "emergencies" in the last 15 years: The evacuation of Saigon and the flight of the "Boat People" from 1975 to 1979, and the "Mariel exodus" of 1980. We responded with great generosity during those crises, yet I feel our will to respond to future refugee emergencies may be diminished if this legislation were enacted.

There is simply too much illegal immigration pressure in the Western Hemisphere for us to admit people claiming a refugee or quasi-refugee status on anything other than a case-by-case basis. The suspension of deportation legislation would have the illogical effect of granting a legal status and work authority in the United States to any person from El Salvador or Nicaragua—even if they do not qualify for political asylum and have no fear of returning to their homeland.

The General Accounting Office (GAO) recently issued a study (January 1987) which found that there were no clear "uniform standards" for judging asylum applications—but it *did not* conclude that Salvadoran asylum applications were treated in an unfair manner. All of the asylum cases that it surveyed were before either an INS District Director or the Executive Office for Immigration Review. Each of these asylum cases may be subsequently reviewed in the proper Federal Circuit Court of Appeals. To date, there has been no "pattern of reversal" at the Federal court level of the denied Salvadoran applications. I believe the Federal courts—not the GAO—are the authority on fairness in asylum applications, and so far, there is no indication that they find the political asylum process biased against Salvadorans or any other specific nationality group.

Finally, the GAO found that, of those asylum applications denied, only 2 percent of the cases were placed in deportation proceedings. In fact, the GAO recommended that *more* denied appli-

cants be deported. It would appear that the rhetoric about our large-scale deportation of Salvadorans is simply that: rhetoric.

II. HARM TO U.S. IMMIGRATION AND REFUGEE POLICY

"Temporary" refugee status in the United States is a misnomer. We deport very few of those whom we apprehend or deny asylum to—as I noted above—and the courts tend to recognize the "equities" that these people establish once the Government officially sanctions their presence, even if only for a brief period of time. There is firm and ample evidence of this pressure for "temporary" policies of EVD to become permanent: A number of Senators are now sponsoring legislation that would grant *permanent* resident status to those Polish nationals who are now the beneficiaries of "extended voluntary departure" (EVD). (EVD is the administrative equivalent of the relief that this legislation provides.) Legislation has also been introduced in the House that would grant permanent resident status to nationals of Afganistan who have received EVD, and another House bill would grant suspension of deportation status to Polish nationals. The Senate version of the fiscal year 1988 Commerce, Justice, State Appropriations bill now contains language which would grant permanent residence to such Polish nationals.

In addition to the broad political pressure to make these grants permanent, there is also a very logical motivation to immigrate in the case of individuals who receive such a status: Work at U.S. wage levels is extremely attractive to people from Latin America. Even if many originally intended to return home someday, they often are convinced to stay by the benefits of participation in the U.S. economy. This does not make them greedy or unworthy people, but it surely does fail to demonstrate that they are "refugees" or even "quasi-refugees."

Recent passage of the Immigration Reform and Control Act made clear Congress' commitment to control illegal immigration. However, this legislation would directly undermine that new law. It is inevitable that increased illegal immigration from Nicaragua and El Salvador would occur should this bill be enacted, as the following example shows: A poll taken during the 1984 Salvadoran Presidential elections by the Spanish International Network (formerly "SIN," now "Univision") found that 67 percent of all Salvadorans polled would like to migrate to the United States if they could find work here. S. 332 does state that only those Salvadorans and Nicaraguans present in the United States before the date of enactment of the bill would qualify. Nonetheless, it is most likely that a large number of illegal immigrants from these countries would migrate north between the date of enactment and the end of the bill's application period. During these 4 months, INS would essentially be helpless in determining who entered before the date and who entered after. Illegal immigration would likely increase significantly, and there is a consensus in Congress and among the American public that we should not accept this.

The United States presently embraces for permanent resettlement more refugees than the rest of the world combined. This is a fair and generous policy of which I am very proud and supportive.

We also accept more immigrants than the rest of the world combined, and El Salvador sends its share: Over 8,000 per year as permanent immigrants, over 18,000 per year as nonimmigrants. However, I fear that public support for these policies will weaken if we grant some quasi-refugee status to 500,000 or more Salvadorans—many of whom do not deserve the status—and then most of them stay on to become “permanent”.

Finally, we must recall that the immigration bill granted legal status to all persons present in this country in an illegal status since January 1, 1982 or before. This remarkable act of grace would grant benefits to those Salvadorans who fled during the worst years of the violence in their country—1980 and 1981. It is true that the legalization program will not provide benefits to everyone here illegally from El Salvador or Nicaragua. But neither does it provide such benefits to persons from any other country in the world. Once again, if we pass this bill we undercut U.S. immigration policy by treating the Nationals of specific nations more generously than those from the rest of the world.

III. CONDITIONS IN EL SALVADOR

Human rights conditions in El Salvador have improved significantly in the last 4 years. According to press reports, there were over 9,000 civilian deaths due to the conflict in 1981. By 1984 civilian deaths due to random violence had decreased to 800, in 1985 they decreased further to 335, and in 1986 they fell even further to 261. (In comparison, 1,384 persons were murdered or otherwise violently killed in New York City in 1985.) Any number of deaths is regrettable, but we should not fail to note this significant downward trend—and this legislation's increasing lack of justification on human rights grounds.

No studies have shown that Salvadorans returned from the United States face random violence of such a level that their lives are endangered. A now discredited study by the ACLU purported to show such evidence, yet it found “possible” human rights violations in less than 1 percent of the cases that were reviewed. Because of the extraordinary suspension of U.S. immigration laws that this legislation proposes, I believe that the burden is on the proponents to prove the “unsafe” conditions in El Salvador for returnees. To this point they simply have not proved it. I firmly believe that they are unable to prove it because such a condition does not exist.

I take strong issue with the assertion in the majority report that “over 62,000 innocent civilians have been killed by random violence associated with the ongoing civil war.” On what facts or studies is this figure based? The assertion is not supported.

In hearings before the House Immigration Subcommittee on April 12, 1984, Congressman Moakley (House cosponsor of the bill) mentioned “more than 38,000 murders of civilian, noncombatants, by Government forces.” At hearings before the same subcommittee on November 7, 1985, Congressman Moakley testified that “over 50,000” civilians had fallen victim to the civil conflict. Now, in October 1987, that number has been increased by proponents of the bill to 62,000. Therefore, to believe these figures, in the last 3 years

and 6 months there have been 24,000 civilian casualties in El Salvador. No studies would support this conclusion. In fact, even Tutela Legal—a church-sponsored human rights organization that has been much criticized for its overreporting of “civilian casualties”—does not provide statistics that would even come close to supporting the allegation of 24,000 deaths since 1984, or 62,000 deaths since the conflict began. The figures based on press-reported deaths would indicate slightly more than 1,400 civilian deaths during this 3-year period (and I emphasize again that New York City experiences 1,384 violent deaths in 1 year). I emphatically note the lack of justification for these numbers.

While some provinces in El Salvador with heavy guerrilla concentrations do experience significant violence, there are displaced person camps in relatively conflict-free areas of El Salvador which can accommodate these people. Correspondingly, the United States has contributed approximately \$20 million per year to these camps to improve living conditions. There are also camps available in Honduras to those Salvadorans who prefer to leave the country, and these camps are administered by the United Nations. Most important, however, is a finding by the GAO that only 25 percent of those Salvadorans returning to El Salvador were headed to the more conflictive provinces in the country.

In general, there are three internationally recognized options for dealing with refugee situations, in the following order: (1) voluntary repatriation, (2) resettlement within the region (in this case, Central America), or (3) third country resettlement (the United States). If we were to assume that all Salvadorans and Nicaraguans are refugees (with which I obviously disagree), this legislation still subverts these well-recognized priorities by immediately moving to the third option without seriously attempting the first two.

Returned Salvadorans are met at the San Salvador Airport by the Intergovernmental Committee on Migration (ICM), a respected international organization, and are screened with regard to their need for food, clothing, shelter, need for travel documents, and possible need for referral to a displaced persons camp. Between December 1984 and December 1986, ICM screened over 9,500 returning persons, reestablished contact with 82 percent through either a returned questionnaire or a field visit, and found that nine returnees had died. Of the nine dead, one was killed in the cross-fire between guerrillas and the army, two committed suicide, one drowned, two died from natural causes, one died while robbing a store, one died in a barroom dispute over a soccer match, and one died from unknown causes *after returning to the United States*. This is hardly evidence of either targeted or random violence sufficient to justify our granting a legal status to over 500,000 people who are in the United States illegally. If anything, this is persuasive evidence that the human rights conditions in El Salvador have improved significantly since President Duarte took office in 1984.

Since the release of these figures, the GAO has reported that ICM's study is less than infallible. This same GAO study also stated there are “weaknesses inherent in the data collection methodologies of human rights monitoring organizations” as well. I would not disagree with either assertion, but I would add that ICM has the *best* information available, and that the proponents of this

legislation have not come up with contrary evidence that is half as convincing. Again, I remind my colleagues that the burden of proof is on the proponents of this blanket suspension of our immigration laws.

The GAO findings only prove that a scientifically unchallengeable study is probably impossible in most countries—or even in New York City—and that the GAO will not be able to do much better with the study that this bill requires. Nonetheless, we must recognize that all groups interviewed—ICM, that State Department, religious and human rights groups—admit that the deaths due to random violence are down significantly. The GAO study also supports this trend. It is thus inappropriate to contend, as some interest-group advocates have, that “everyone not tracked by the ICM report could be dead.”

I proposed an amendment during the committee consideration of this bill to increase ICM’s funding so that its monitoring services may be improved. I was pleased that the amendment was accepted, and I will gladly support any other efforts to screen and monitor those persons returned to El Salvador.

It is also a myth that Salvadorans will not return voluntarily to their own country. TACA, the Salvadoran airline, has 22 flights each week from the United States to San Salvador. These flights are almost full, and more than 10,000 people per month are on board these flights back to El Salvador. While not every one of these passengers is a Salvadoran, the large majority are, and the large majority are returning voluntarily: 10,000 people return per month on TACA—and the United States returns only about 400 Salvadorans per month who were detected by the INS. Certainly most Salvadorans in the United States feel that it is safe to return to their homeland.

Most recently, a group of approximately 4,500 Salvadorans living in camps in Mesa Grande, Honduras decided to voluntarily return to El Salvador. This voluntary repatriation is of particular importance, because most Central American experts agree that this camp has a significant population of “Guerrilla supporters.” If Salvadorans who are identified with the insurgency feel it is safe enough to return to their homeland, then it is clear that the claims of improved country conditions are not just accepted by opponents of this bill, but by the Salvadoran people as well.

Salvadorans are an incredibly industrious, Hard-working people. Their rapid undocumented migration and assimilation into Honduras was the main cause for the 1969 “soccer war,” and Salvadorans have been the second most commonly apprehended illegal entrant on our southern border—after Mexicans—since the early 1970’s, that is, before the conflict in El Salvador escalated. We must not bury our heads in the sand with regard to the historically *economic* motive that Salvadorans have shown for migration to the United States. President Duarte proved this point clearly when he asked that Salvadorans be exempted from employer sanctions because of lack of work in El Salvador and his country’s need for the remittances that Salvadorans send home. Despite our sympathy and support for President Duarte and his countrymen, we must not distort our refugee laws by admitting economic migrants under this rubric. There are countless millions of people in the world who

would like to justify their economic motives for migration by claiming refugee status, but our refugee program would collapse if we accepted such arguments.

Clearly, most Salvadorans left their country for economic reasons, have few security fears, and may return to relatively stable parts of the country—yet this bill would give them a refugee-like benefit anyway. There is a wealth of information that proves that conditions in El Salvador simply do not warrant a *blanket* suspension of the deportation of Salvadoran nationals who are present in the United States in an illegal immigration status. There is little evidence to the contrary—as the majority views prove.

IV. NICARAGUA

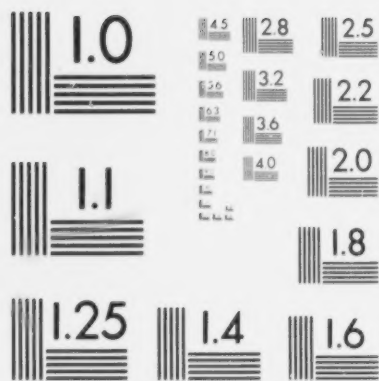
This legislation did not include Nicaraguan nationals when it was introduced, and I therefore have focussed my remarks on El Salvador. However, I have not been presented with convincing evidence either that Nicaraguan nationals deserve *blanket* refugees status, or that it is a country that should be singled out individually for special attention. I voted against the amendment to add Nicaraguans as beneficiaries of this legislation, and I was disappointed that the amendment was adopted. We can always closely and sympathetically examine applications for refugee status on an individual basis, but we seriously undermine our immigration laws by employing the crude approach of blanket suspension of deportation.

V. CONCLUSION

There are a number of alternatives to this broad, unjustified legislation. One suggestion is to institute, on a case-by-case basis, a review of the conditions that deportable nationals of El Salvador and Nicaragua would face if returned. I would not object to INS District Directors using their discretionary authority to decide whether certain aliens might deserve additional time in the United States until either: (1) The situation in their home village or city improves, or (2) assistance can be found for them elsewhere in their home country. In fact, this is the policy now in effect for nationals of Lebanon.

However, this legislation wants to "have it all," and that is neither wise nor palatable given the present reality of immigration and refugee policy. The United States should never forfeit its right to deport someone who has no legal basis for being in this country and no reasonable claim for fearing to return. I intend to convince my colleagues of the wisdom of this position should the legislation be taken up by the full Senate.

ALAN K. SIMPSON.



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